

In The Matter Of:

MARC S. KIRSCHNER, ET AL.

v.

PHILLIP R. BENNET, ET AL.

NATHANAËL BENZAKEN 30(b)(6) - Vol. 1
October 21, 2011

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NATHANAËL BENZAKEN 30 (b) (6) - 10/21/2011

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re REFCO, INC. SECURITIES
LITIGATION 07-MDL-1902
(JSR)

-----x
MARC S. KIRSCHNER, as Trustee of the
Refco Private Actions Trust,

Plaintiff,

-against- Case No. 07-CV-8165
(JSR)

PHILLIP R. BENNET, et al.,

Defendants.

-----x
GRANT THORNTON LLP,

Defendant/Third-Party Plaintiff,

-against-

THOMAS H. LEE PARTNERS, L.P., et al.,

Third-party Defendants.

-----x

October 21, 2011

9:36 a.m.

Videotaped 30(b)(6) deposition of
LYXOR/BEACH DISCRETIONARY FUND LIMITED and
LYXOR/ESTLANDER & RONNLUND FUND LIMITED by
NATHANAËL BENZAKEN, at the offices of
Winston & Strawn LLP, 200 Park Avenue, New
York, New York, before Gail F. Schorr, a
Certified Shorthand Reporter, Certified
Realtime Reporter and Notary Public within
and for the State of New York.

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<p style="text-align: right;">Page 46</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 In the case of Beach</p> <p>3 Discretionary, it's certainly more</p> <p>4 difficult for me to answer that question</p> <p>5 as I wasn't in charge of analyzing or</p> <p>6 supervising the fund in particular.</p> <p>7 Q. Did you play any role in the</p> <p>8 decisionmaking with respect to which</p> <p>9 brokerage firms the funds would use for</p> <p>10 their FX trading?</p> <p>11 A. For those two?</p> <p>12 Q. Yes.</p> <p>13 A. When I took over on Feb 1st</p> <p>14 the two funds were already set up, so I</p> <p>15 had no involvement in picking the</p> <p>16 counterparty.</p> <p>17 Q. They were set up with Cargill?</p> <p>18 A. That's correct.</p> <p>19 Q. Specifically CIS Financial</p> <p>20 Services; is that your understanding?</p> <p>21 A. The precise name of the entity</p> <p>22 it sounds familiar.</p> <p>23 Q. Did you ever read audit</p> <p>24 reports prepared by the outside auditors</p> <p>25 of the brokerage firms with which the</p>	<p style="text-align: right;">Page 48</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 Q. At any time?</p> <p>3 A. We had discussion in 2008</p> <p>4 where some managers told us they were</p> <p>5 concerned by Bear Stearns. On what</p> <p>6 basis, I can't say.</p> <p>7 Q. That they were concerned by</p> <p>8 what, I'm sorry?</p> <p>9 A. Bear Stearns.</p> <p>10 Q. Bear Stearns, okay. That was</p> <p>11 in 2008?</p> <p>12 A. 2008.</p> <p>13 Q. Prior to 2008, you can't</p> <p>14 remember any discussion of audit reports?</p> <p>15 A. I can't remember.</p> <p>16 Q. Do you know whether the Lyxor</p> <p>17 funds usually made spot trades or futures</p> <p>18 trades when it comes to foreign currency</p> <p>19 trading?</p> <p>20 A. In general, they can do both.</p> <p>21 In those two cases specifically, I can't</p> <p>22 say for sure. At this -- unless that</p> <p>23 obviously they did trade some forwards</p> <p>24 with Cargill, forward contracts.</p> <p>25 Q. You believe they used forward</p>
<p style="text-align: right;">Page 47</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 Lyxor funds invested?</p> <p>3 A. I didn't, sir. I didn't.</p> <p>4 Q. You did not?</p> <p>5 A. Did not.</p> <p>6 Q. To your knowledge, did any of</p> <p>7 the fund managers, either internal or</p> <p>8 external at Lyxor, typically read audit</p> <p>9 reports that were prepared by the outside</p> <p>10 auditors of the brokerage firms with</p> <p>11 which they invested?</p> <p>12 A. Given the high standards of</p> <p>13 the organization I work with, as well as</p> <p>14 the managers we select, the professional</p> <p>15 in charge of monitoring counterparty</p> <p>16 risk, I cannot believe that he didn't</p> <p>17 look at the audited financial statements</p> <p>18 of all the counterparties.</p> <p>19 Q. Do you have any recollection</p> <p>20 of any fund manager ever telling you that</p> <p>21 he or she had reviewed an audit report</p> <p>22 prepared by an outside auditor of the</p> <p>23 brokerage firm with which they were</p> <p>24 investing with FX?</p> <p>25 A. At what time?</p>	<p style="text-align: right;">Page 49</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 contracts in addition to spot trading?</p> <p>3 A. It's highly likely.</p> <p>4 Q. Can you explain the different</p> <p>5 types of FX trading to the ladies and</p> <p>6 gentlemen of the jury? I don't think</p> <p>7 I've had you do that yet. What is a spot</p> <p>8 trade versus a forward contract, versus</p> <p>9 futures trading, if you could?</p> <p>10 A. As a disclaimer, I'm not an FX</p> <p>11 trader. I never traded FX, as I told</p> <p>12 you. And futures on FX is a -- is an</p> <p>13 instrument trading, traded on an</p> <p>14 organized exchange.</p> <p>15 Forward is a -- is an unlisted</p> <p>16 forward traded OTC, over the counter, so</p> <p>17 on the basis of an ISDA contract, which</p> <p>18 is a derivative agreement between the</p> <p>19 counterparties and the fund.</p> <p>20 And spot trading is buying and</p> <p>21 selling the currency on the spot.</p> <p>22 MR. DOYLE: Would you mark</p> <p>23 this as Exhibit 3227.</p> <p>24 (Deposition Exhibit 3227 for</p> <p>25 identification, document titled</p>

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<p style="text-align: right;">Page 98</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 have been the only company that the Lyxor</p> <p>3 funds were doing FX trading with?</p> <p>4 A. It's highly likely that it was</p> <p>5 the sole company.</p> <p>6 Q. You're certainly not aware of</p> <p>7 any other companies?</p> <p>8 A. Besides the fact that we ended</p> <p>9 up with Refco afterwards, but that's it.</p> <p>10 Q. Do you have any understanding,</p> <p>11 sir, of the factors that contributed to</p> <p>12 the decision to open accounts with</p> <p>13 Cargill? I know it predated your</p> <p>14 employment with Lyxor, but have you ever</p> <p>15 discussed with anybody or through any</p> <p>16 other source have you ever gleaned any</p> <p>17 understanding of why they decided to use</p> <p>18 Cargill?</p> <p>19 A. I have no idea, sir.</p> <p>20 Q. Aside from RCM, sir, have any</p> <p>21 of Lyxor's brokerage firms experienced</p> <p>22 financial difficulties, to your</p> <p>23 knowledge?</p> <p>24 A. Would you mind repeating the</p> <p>25 question.</p>	<p style="text-align: right;">Page 100</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 Brothers.</p> <p>3 Q. Before the transfer of the</p> <p>4 Lyxor funds' FX trading accounts from</p> <p>5 Cargill to RCM, had Lyxor ever had any</p> <p>6 type of business relationship with Refco</p> <p>7 or one of its subsidiaries?</p> <p>8 A. We had in the past one</p> <p>9 relationship if I recall correctly. One</p> <p>10 managed account run by, called Lonestar</p> <p>11 utilizing Refco as a broker.</p> <p>12 Q. For what types of trading?</p> <p>13 A. To be precise, certainly</p> <p>14 around the futures trading as well as</p> <p>15 currency trading, but I can't say for</p> <p>16 certain.</p> <p>17 Q. Can you put any time frame on</p> <p>18 that? Do you know the date range during</p> <p>19 which the Lonestar fund was utilizing the</p> <p>20 services of Refco?</p> <p>21 A. I think the Lonestar managed</p> <p>22 account started sometime around 2003 and</p> <p>23 if I recall correctly, my predecessor</p> <p>24 closed it around 2005 -- 2004, 2004.</p> <p>25 Q. Do you have an understanding</p>
<p style="text-align: right;">Page 99</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 Q. You're aware of the financial</p> <p>3 difficulties of Refco that came to light</p> <p>4 in October 2005, correct?</p> <p>5 A. Correct.</p> <p>6 Q. To your knowledge, have any of</p> <p>7 the other brokerage firms that Lyxor has</p> <p>8 used over the years experienced financial</p> <p>9 difficulties?</p> <p>10 MR. GOTTLIEB: Objection to</p> <p>11 the form of that. If we're talking</p> <p>12 about the two Lyxor companies I</p> <p>13 think he only knew of Cargill or</p> <p>14 CIS and perhaps Refco. So are you</p> <p>15 asking him about Cargill and Refco?</p> <p>16 Q. No, I was really -- I didn't</p> <p>17 limit my question I don't believe to the</p> <p>18 Lyxor funds. I was looking more broadly</p> <p>19 at the various Lyxor funds beyond just</p> <p>20 the two at issue in this case.</p> <p>21 A. And during a specific period</p> <p>22 of time or until now?</p> <p>23 Q. Since you've been there?</p> <p>24 A. Obviously we went through</p> <p>25 interesting times during 2008 with Lehman</p>	<p style="text-align: right;">Page 101</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 as to why that account was closed?</p> <p>3 A. Exactly the answer is no. We</p> <p>4 were not necessarily very happy with the</p> <p>5 performance most probably.</p> <p>6 Q. What is your understanding</p> <p>7 today of exactly when the Lyxor funds' FX</p> <p>8 trading accounts were transferred to RCM?</p> <p>9 A. Can you be specific with your</p> <p>10 question?</p> <p>11 Q. This question relates solely</p> <p>12 to the two Lyxor funds that are at issue</p> <p>13 in this case, and the question is what is</p> <p>14 your understanding today?</p> <p>15 A. Today.</p> <p>16 Q. As to exactly when those</p> <p>17 accounts transferred from Cargill to RCM?</p> <p>18 A. If I recall correctly, the</p> <p>19 deal closed end of August and I tend to</p> <p>20 believe that the transfer or legal</p> <p>21 transfer happened by then by virtue of</p> <p>22 this negative consent letter that we --</p> <p>23 that I never saw, that the firm maybe</p> <p>24 received.</p> <p>25 Q. To your knowledge, sir, when</p>

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<p style="text-align: right;">Page 102</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 is the first time that anyone at Lyxor</p> <p>3 realized that the Lyxor funds' FX trading</p> <p>4 accounts had been transferred to RCM?</p> <p>5 A. This is impossible for me to</p> <p>6 tell you. I don't know. It's a large</p> <p>7 organization. This was brought to my</p> <p>8 attention obviously when this situation</p> <p>9 happened.</p> <p>10 MR. GOTTLIEB: I'm not sure --</p> <p>11 what situation?</p> <p>12 A. I mean the bankruptcy and</p> <p>13 certainly the moratorium that was put in</p> <p>14 place.</p> <p>15 MR. GOTTLIEB: Thank you.</p> <p>16 Q. So if I understand your</p> <p>17 testimony, the public revelations in</p> <p>18 October of 2005 that led to the Refco</p> <p>19 bankruptcy were the first that you became</p> <p>20 aware that these two Lyxor funds' FX</p> <p>21 trading accounts had been transferred</p> <p>22 from Cargill to RCM; is that correct?</p> <p>23 A. That's correct.</p> <p>24 MR. DOYLE: Can you please</p> <p>25 mark this as whatever the next</p>	<p style="text-align: right;">Page 104</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 contained in the first two pages of this</p> <p>3 exhibit in fact the negative consent</p> <p>4 letters that you've referred to at</p> <p>5 various times during your testimony so</p> <p>6 far today?</p> <p>7 A. Can I -- can I go through it</p> <p>8 again, do you mind?</p> <p>9 Q. Sure.</p> <p>10 A. Yes, it's certainly the</p> <p>11 negative consent letter that I referred</p> <p>12 to earlier.</p> <p>13 Q. Just to be clear, let me read</p> <p>14 a little bit of this into the record, and</p> <p>15 the first letter relates to account</p> <p>16 number 93350 which is an account of the</p> <p>17 Lyxor/Estlander & Ronnlund Fund, correct?</p> <p>18 A. It reads that way.</p> <p>19 Q. And the second letter, just</p> <p>20 for the record, relates to account number</p> <p>21 93352, which is an account of the</p> <p>22 Lyxor/Beach Discretionary Fund, correct?</p> <p>23 A. This is what's written.</p> <p>24 Q. And the text of the letters is</p> <p>25 identical, right?</p>
<p style="text-align: right;">Page 103</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 numbered exhibit is.</p> <p>3 (Deposition Exhibit 3228 for</p> <p>4 identification, Bates stamped</p> <p>5 REFCO-S-0788872 through 74.)</p> <p>6 Q. Mr. Benzaken, I'm showing you</p> <p>7 what's just been marked as Exhibit 3228.</p> <p>8 MR. DOYLE: For the record, it</p> <p>9 is a three-page document bearing</p> <p>10 Bates numbers REFCO-S-0788872</p> <p>11 through 74, and it actually</p> <p>12 contains two different letters</p> <p>13 dated August 15th, 2005 and then</p> <p>14 some type of airborne shipments</p> <p>15 record.</p> <p>16 Q. Have you seen these documents</p> <p>17 before, sir?</p> <p>18 A. I think I saw them yesterday.</p> <p>19 MR. GOTTLIEB: Other than</p> <p>20 that.</p> <p>21 A. I may have seen them when we</p> <p>22 had to evaluate the situation, when the</p> <p>23 problem were revealed to the market at</p> <p>24 Refco, but I can't say for certain.</p> <p>25 Q. Are these two letters that are</p>	<p style="text-align: right;">Page 105</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 A. Well, unless I can compare</p> <p>3 word by word, it looks like that.</p> <p>4 Q. Let me just read from the</p> <p>5 letter for the Lyxor/E&R fund. It</p> <p>6 states, "Dear customer: We wish to</p> <p>7 advise you that CIS Financial Services,</p> <p>8 Inc. has agreed to sell certain of its</p> <p>9 assets to Refco Group Ltd., LLC, the</p> <p>10 parent company of Refco Capital Markets</p> <p>11 Ltd., effective as of the close of</p> <p>12 business on August 31st, 2005. As a</p> <p>13 result of this transaction, we propose to</p> <p>14 transfer your account to RCM.</p> <p>15 "Your account documentation</p> <p>16 will be assigned to RCM on August 31st,</p> <p>17 2005, unless you notify CISFS not to</p> <p>18 effect such assignment and we actually</p> <p>19 receive such notice at the CISFS address</p> <p>20 listed below prior to 5 p.m. on August</p> <p>21 26th, 2005."</p> <p>22 Have I read that correctly?</p> <p>23 A. You did.</p> <p>24 Q. If you look at the last page</p> <p>25 of this document, it would appear that</p>

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<p style="text-align: right;">Page 106</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 these letters were sent overnight to the</p> <p>3 Lyxor funds on August 16th, 2005. Do you</p> <p>4 see that?</p> <p>5 A. I can see it.</p> <p>6 (Witness and counsel confer.)</p> <p>7 Q. So Cargill was attempting to</p> <p>8 give the Lyxor funds approximately 10</p> <p>9 days to object in writing to the transfer</p> <p>10 of their accounts to RCM, is that your</p> <p>11 understanding based on these letters?</p> <p>12 A. I'm sorry, would you mind</p> <p>13 repeating the question.</p> <p>14 Q. Yes. These letters which I</p> <p>15 just read from were sent to Lyxor on</p> <p>16 August 16th, 2005, correct? According to</p> <p>17 the shipment date?</p> <p>18 A. This is the date, this is the</p> <p>19 date that's on this letter.</p> <p>20 Q. Lyxor's being told to respond</p> <p>21 by August 26th, 2005 or this transfer is</p> <p>22 going to occur, correct?</p> <p>23 A. This is how it reads.</p> <p>24 Q. So you're basically being</p> <p>25 given 10 days to respond in writing if</p>	<p style="text-align: right;">Page 108</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 A. Never worked with him.</p> <p>3 Q. And you can see that both of</p> <p>4 these letters are in fact addressed to</p> <p>5 him; is that correct?</p> <p>6 A. This is what's written on the</p> <p>7 letters.</p> <p>8 Q. Do you see a fax track at the</p> <p>9 top of the letters?</p> <p>10 A. I do.</p> <p>11 Q. And do you see the date of</p> <p>12 that fax track?</p> <p>13 A. October 20th, 2005.</p> <p>14 Q. So it would appear based on</p> <p>15 the document that somebody from Cargill</p> <p>16 fax'd these letters to somebody at Lyxor</p> <p>17 on October 20th, 2005; is that correct?</p> <p>18 MR. RAND: Objection; form.</p> <p>19 A. Certainly.</p> <p>20 Q. Do you have any independent</p> <p>21 knowledge of that?</p> <p>22 A. Of the fact being receiving a</p> <p>23 fax?</p> <p>24 Q. Yes.</p> <p>25 A. I can't recall for certain.</p>
<p style="text-align: right;">Page 107</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 you don't want your accounts transferred</p> <p>3 from Cargill to RCM, right?</p> <p>4 A. This is the process as written</p> <p>5 here.</p> <p>6 Q. Right. And my question, sir,</p> <p>7 is do you believe that anybody at Lyxor</p> <p>8 saw these letters in August 2005, anybody</p> <p>9 who was still there?</p> <p>10 A. The thing is this letter was</p> <p>11 sent to Raphael Faure, who wasn't with</p> <p>12 the firm anymore at the time, so I can't</p> <p>13 say for sure that this letter was</p> <p>14 received by anyone. I haven't seen it</p> <p>15 before October when the bankruptcy and</p> <p>16 the moratorium started. That's the only</p> <p>17 thing really I can tell you.</p> <p>18 Q. Who is Raphael Faure?</p> <p>19 A. I don't know.</p> <p>20 Q. So he's not -- do you know</p> <p>21 when he left Lyxor?</p> <p>22 A. I don't know. He wasn't there</p> <p>23 when I was there.</p> <p>24 Q. So he was not somebody that</p> <p>25 you had worked with at the company?</p>	<p style="text-align: right;">Page 109</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 What I can say is that we -- when we find</p> <p>3 out that the transfer happened without</p> <p>4 our knowledge, we wanted to understand</p> <p>5 and investigate what happened, and we</p> <p>6 certainly asked for evidence of what</p> <p>7 happened.</p> <p>8 Q. Do you know the identity of</p> <p>9 the person at Cargill who faxed these</p> <p>10 letters on October 20th, 2005?</p> <p>11 A. I don't.</p> <p>12 Q. Were you the person who</p> <p>13 received this fax?</p> <p>14 A. I didn't.</p> <p>15 Q. Do you know who received this</p> <p>16 fax?</p> <p>17 MR. RAND: Same objection. I</p> <p>18 have a continuing objection</p> <p>19 actually.</p> <p>20 A. I don't remember.</p> <p>21 MR. RAND: Go ahead.</p> <p>22 Q. I'm sorry, can you restate</p> <p>23 your answer? Do you know who received</p> <p>24 this fax?</p> <p>25 A. I don't.</p>

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<p style="text-align: right;">Page 114</p> <p>1 NATHANAËL BENZAKEN 2 organization is a large organization. I 3 had no reason to believe that the mail 4 has been sent got lost, but I can't say 5 for certain. 6 Q. What do you recall occurring 7 with respect to any communications with 8 Cargill once it came to your attention in 9 October of 2005 after the problems at 10 Refco came to light that these accounts 11 had in fact been transferred to RCM? 12 MR. GOTTLIEB: Would you 13 repeat that question. 14 A. Please. 15 Q. I just want to know, if I 16 understand your testimony, you didn't 17 know that these accounts had transferred 18 to RCM until October of 2005? 19 A. That's correct. 20 Q. When the financial problems at 21 Refco came to light? 22 A. That's correct. 23 Q. And what I'm trying to figure 24 out, to the extent you recall, is what 25 you did about it? Did you have</p>	<p style="text-align: right;">Page 116</p> <p>1 NATHANAËL BENZAKEN 2 anything, upon learning in October of 3 2005 that the FX trading accounts of 4 these two Lyxor funds had been 5 transferred from Cargill to RCM without 6 your knowledge? 7 A. When I found out that we had 8 assets with Refco without knowing it, 9 without having signed any contract with 10 Refco, my, one of my colleagues, 11 Alexandre Labbe, tried to -- contacted 12 our contact there at CIS to ask the money 13 back because it wasn't supposed to be 14 with Refco, it was supposed to be with 15 CIS. And given the fact that no answer, 16 no answer came back, it was escalated to 17 me and I sent an email to our contact 18 there to basically get an explanation and 19 certainly get our money back. 20 Q. And do you recall what you 21 were told by your colleague at Cargill? 22 A. I'm sorry? 23 Q. Did you say you sent an email 24 to someone at Cargill? 25 A. To our contact who was</p>
<p style="text-align: right;">Page 115</p> <p>1 NATHANAËL BENZAKEN 2 communications with Cargill subsequently 3 about the fact that these accounts were 4 transferred to RCM unbeknownst to you? 5 A. I don't understand the last 6 words of your question. 7 Q. Without you knowing about it. 8 In other words, did you have conversations 9 with anybody at Cargill about the fact 10 that the Lyxor funds' FX accounts were 11 transferred from Cargill to RCM without 12 you knowing anything about it? 13 MR. RAND: I just want to 14 object. I want to make sure 15 because of the nature of the 16 deposition, when you say you, so 17 the witness isn't confused, you're 18 talking about him personally? 19 MR. DOYLE: I was talking 20 about him personally. 21 MR. RAND: I just wanted to 22 make certain. 23 A. I'm sorry, I'm going to ask 24 you to repeat the question again. 25 Q. Sure. What did you do, if</p>	<p style="text-align: right;">Page 117</p> <p>1 NATHANAËL BENZAKEN 2 supposed to be our contact. 3 Q. And do you remember what that 4 person said in response to your email? 5 A. The exact content? No, I 6 don't remember. 7 Q. Generally what was the 8 response? 9 A. I -- I have an understanding 10 of what was the situation. I don't know 11 whether he -- what he actually replied to 12 me in specifically beside the fact that 13 obviously the money is with RCM and 14 cannot be wired back to us. 15 Q. So is it correct to state, Mr. 16 Benzaken, that you were informed by 17 Cargill about the negative consent 18 letters, about the fact that the accounts 19 had transferred to RCM, and about the 20 fact that there was a trading moratorium 21 so that you were unable at that time to 22 access those funds? 23 MR. FRIEDMAN: Objection to 24 form. 25 A. By October?</p>

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<p style="text-align: right;">Page 154</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 typically the type of agreement that we</p> <p>3 expect to have signed with any of the</p> <p>4 authorized counterparties the fund could</p> <p>5 have dealt with.</p> <p>6 Q. This particular agreement is</p> <p>7 between CIS Financial Services on the one</p> <p>8 hand, a Trustee of the Lyxor Master Fund</p> <p>9 by the name of SG Hambros Trust Company</p> <p>10 (Jersey) Limited and then Lyxor Asset</p> <p>11 Management, which is the company you work</p> <p>12 for, correct?</p> <p>13 A. Correct.</p> <p>14 Q. If you could turn to page 11</p> <p>15 of this agreement and specifically at the</p> <p>16 top of the page paragraph 7. Do you have</p> <p>17 that in front of you?</p> <p>18 A. I do.</p> <p>19 Q. I'm not going to read this</p> <p>20 word for word, but in relevant part this</p> <p>21 paragraph 7 provides, "Neither this</p> <p>22 agreement nor any interest or obligation</p> <p>23 in or under this agreement may be</p> <p>24 transferred, whether by way of security</p> <p>25 or otherwise, by either party without the</p>	<p style="text-align: right;">Page 156</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 today about the document?</p> <p>3 MR. DOYLE: I'm asking him</p> <p>4 what the belief would have been at</p> <p>5 the time within the company as a</p> <p>6 30(b)(6) witness based on this</p> <p>7 language.</p> <p>8 MR. GOTTLIEB: That's a</p> <p>9 hypothetical, okay. I object.</p> <p>10 A. As a principle, the company</p> <p>11 expects to always have a contract</p> <p>12 negotiated and executed with any of the</p> <p>13 counterparties, as a principle.</p> <p>14 Q. And as a principle, does the</p> <p>15 company also expect that as opposed to</p> <p>16 the negative consent letters that were</p> <p>17 used in this case, that it will have an</p> <p>18 opportunity to and in fact must consent</p> <p>19 in writing to the transfer of its</p> <p>20 accounts to another party?</p> <p>21 MR. GOTTLIEB: You're asking</p> <p>22 about today or then?</p> <p>23 MR. DOYLE: At the time. I</p> <p>24 don't know that the answer would be</p> <p>25 any different.</p>
<p style="text-align: right;">Page 155</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 prior written consent of the other</p> <p>3 party."</p> <p>4 Do you see that?</p> <p>5 A. I can see that.</p> <p>6 Q. Do you believe that this</p> <p>7 language led Lyxor to believe that its</p> <p>8 accounts could not be transferred to RCM</p> <p>9 or anyone else without Lyxor's prior</p> <p>10 written approval?</p> <p>11 MR. RAND: Objection to form.</p> <p>12 A. Can you repeat the question,</p> <p>13 please.</p> <p>14 Q. Yes. Do you believe that this</p> <p>15 language that talks about obligations not</p> <p>16 being transferred without the prior</p> <p>17 written consent of the parties led Lyxor</p> <p>18 to believe that its FX trading accounts</p> <p>19 could not be transferred without Lyxor's</p> <p>20 prior written approval?</p> <p>21 MR. GOTTLIEB: Objection. Are</p> <p>22 you assuming that he was looking at</p> <p>23 this document, or Lyxor was looking</p> <p>24 at this document at the time? Or</p> <p>25 are you asking about what he thinks</p>	<p style="text-align: right;">Page 157</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 MR. GOTTLIEB: Neither do I,</p> <p>3 that's why I asked when you were</p> <p>4 asking.</p> <p>5 A. Can you ask the question</p> <p>6 again, please.</p> <p>7 MR. DOYLE: Could you reread</p> <p>8 my question.</p> <p>9 (Record read as requested.)</p> <p>10 A. This is a principle that I</p> <p>11 think did apply and still applies.</p> <p>12 Q. Lyxor obviously did not</p> <p>13 provide any written consent for its FX</p> <p>14 trading accounts to be transferred to RCM</p> <p>15 in this case, correct?</p> <p>16 A. I didn't. I don't know if</p> <p>17 anyone did.</p> <p>18 Q. To your knowledge, Mr.</p> <p>19 Benzaken, did the Lyxor funds ever make a</p> <p>20 conscious decision to have their FX</p> <p>21 trading accounts transferred to RCM?</p> <p>22 MR. GOTTLIEB: Objection to</p> <p>23 form.</p> <p>24 A. I didn't make that conscious</p> <p>25 decision. I don't know if anyone else</p>

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<p style="text-align: right;">Page 158</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 made that decision during the time it</p> <p>3 happened.</p> <p>4 Q. You're not aware of anybody at</p> <p>5 Lyxor having made an affirmative decision</p> <p>6 to have the accounts transferred to RCM,</p> <p>7 correct?</p> <p>8 A. I'm not aware of such a fact,</p> <p>9 that's correct.</p> <p>10 Q. At any time prior to October</p> <p>11 14, 2005, sir, did Lyxor or the Lyxor</p> <p>12 funds do anything to investigate the</p> <p>13 financial condition of either Refco or</p> <p>14 RCM?</p> <p>15 A. It was, the question is</p> <p>16 preannouncement of the problems at Refco</p> <p>17 or --</p> <p>18 Q. Right.</p> <p>19 A. Pre. I didn't personally.</p> <p>20 I'm not aware of anybody else did that.</p> <p>21 Q. At any time prior to October</p> <p>22 14, 2005, did Lyxor or the Lyxor funds do</p> <p>23 anything to investigate or analyze the</p> <p>24 solvency or insolvency of Refco or RCM?</p> <p>25 A. When, I'm sorry?</p>	<p style="text-align: right;">Page 160</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 didn't even know that RCM was a</p> <p>3 counterparty prior to October 2005,</p> <p>4 correct?</p> <p>5 MR. RAND: Objection; form.</p> <p>6 A. That's correct.</p> <p>7 Q. So based on that, do you have</p> <p>8 an understanding as to whether or not</p> <p>9 anybody within Lyxor would have done</p> <p>10 anything to analyze or investigate or</p> <p>11 research the solvency of Refco or RCM</p> <p>12 prior to mid-October 2005?</p> <p>13 A. Why we would have done that?</p> <p>14 We had -- we were not aware of being</p> <p>15 exposed to Refco. Why would we have done</p> <p>16 that particular research, unless there</p> <p>17 was something in the press that could let</p> <p>18 us see something was happening there and</p> <p>19 as a matter of information we were always</p> <p>20 want to check whether we have direct or</p> <p>21 indirect exposure to any problems</p> <p>22 happening in the market.</p> <p>23 Q. You're not aware of any</p> <p>24 problems or potential problems happening</p> <p>25 in the market with respect to Refco until</p>
<p style="text-align: right;">Page 159</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 Q. Any time prior to October 14,</p> <p>3 2005?</p> <p>4 A. You're asking the question of</p> <p>5 Lyxor or as a group?</p> <p>6 Q. Did Lyxor, and I'm</p> <p>7 particularly interested in the Lyxor</p> <p>8 funds, do anything to analyze the</p> <p>9 solvency or insolvency of Refco or RCM?</p> <p>10 A. To be precise, the funds</p> <p>11 cannot do anything of that. We were</p> <p>12 acting as a sub-manager so it was</p> <p>13 delegated to us as a function. That's</p> <p>14 point number 1. .</p> <p>15 Point number 2, we have a --</p> <p>16 we relied on Societe Generale</p> <p>17 counterparty risk management to validate</p> <p>18 the counterparty we deal with, and</p> <p>19 therefore, as a consequence, their being</p> <p>20 in charge of monitoring counterparties,</p> <p>21 it was their responsibility to come to us</p> <p>22 and say if something, anything could have</p> <p>23 been wrong with any counterparty,</p> <p>24 including Refco.</p> <p>25 Q. But in this case, sir, you</p>	<p style="text-align: right;">Page 161</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 October 2005, correct?</p> <p>3 A. I'm not aware of any problem</p> <p>4 and if we were, we would have certainly</p> <p>5 been made aware, but without knowing that</p> <p>6 we had exposure.</p> <p>7 Q. When the FX trading accounts</p> <p>8 were transferred to RCM did the Lyxor</p> <p>9 funds know that Grant Thornton was RCM's</p> <p>10 outside auditor?</p> <p>11 A. I didn't know.</p> <p>12 Q. Do you have any reason to</p> <p>13 believe that anybody else within Lyxor</p> <p>14 knew at the time of the transfer of the</p> <p>15 accounts to RCM that Grant Thornton was</p> <p>16 RCM's outside auditor?</p> <p>17 A. You're asking the question</p> <p>18 when it happened supposedly contractually</p> <p>19 by virtue of the negative consent?</p> <p>20 Q. Right. Which would have been</p> <p>21 as we looked at some documents, August</p> <p>22 31st, 2005 approximately?</p> <p>23 A. So the answer is likely that</p> <p>24 we didn't know because we didn't even</p> <p>25 know we had exposure to Refco at the</p>

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<p style="text-align: right;">Page 170</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 were publicly available in 2005?</p> <p>3 A. Say it again.</p> <p>4 Q. Do you know whether Grant</p> <p>5 Thornton's audit reports concerning RCM</p> <p>6 were publicly available in 2005?</p> <p>7 A. For which year, 2004? The, in</p> <p>8 the auditor's letters?</p> <p>9 Q. In the year 2005, right.</p> <p>10 A. I'm assuming that they issue a</p> <p>11 letter every year, so it was probably</p> <p>12 available, but I don't know for sure.</p> <p>13 Q. Are you aware that RCM was a</p> <p>14 private company?</p> <p>15 A. I don't know what the</p> <p>16 implication are, but it was a company to</p> <p>17 me.</p> <p>18 Q. Do you know the difference</p> <p>19 between a public and a private company in</p> <p>20 terms of the reporting obligations that</p> <p>21 need to be made?</p> <p>22 A. I know that the vague</p> <p>23 distinction, but certainly not the</p> <p>24 reporting obligation that makes them</p> <p>25 different.</p>	<p style="text-align: right;">Page 172</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 theory versus telling me what you know</p> <p>3 occurred.</p> <p>4 A. Absolutely. That's why I am</p> <p>5 -- this is what I meant saying.</p> <p>6 Q. I appreciate that. So what I</p> <p>7 want to make sure is I understand to the</p> <p>8 extent you know personally and speaking</p> <p>9 on behalf of the Lyxor funds, to the</p> <p>10 extent you're able to do so today as</p> <p>11 their designee, do you know sitting here</p> <p>12 today whether anybody making investment</p> <p>13 decisions for the Lyxor funds had access</p> <p>14 to and reviewed any Grant Thornton audit</p> <p>15 report of RCM or Refco prior to</p> <p>16 mid-October 2005?</p> <p>17 A. I don't know for certain that</p> <p>18 this happened. I know that they did a</p> <p>19 review, SG counterparty risk management,</p> <p>20 to the extent -- I'm sorry, I'm confused.</p> <p>21 So I know for a fact that they did a</p> <p>22 review. What they did to the review,</p> <p>23 it's their job. As I said, I know what</p> <p>24 best practices are. I can't say more</p> <p>25 than that.</p>
<p style="text-align: right;">Page 171</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 Q. In response to some of my</p> <p>3 earlier questions you talked about the</p> <p>4 possibility that certain people at SG,</p> <p>5 Societe Generale had reviewed audit</p> <p>6 reports of Refco or RCM.</p> <p>7 Do you even know whether the</p> <p>8 audit reports of Refco or RCM prior to</p> <p>9 mid-October 2005 were publicly available</p> <p>10 to be reviewed by people in that</p> <p>11 position?</p> <p>12 A. I don't know exactly. What I</p> <p>13 think I told -- what I think I said is</p> <p>14 that part of the best practice to</p> <p>15 evaluate the counterparty risk associated</p> <p>16 to a certain counterparty to the extent</p> <p>17 audited financial statements are</p> <p>18 available, this is certainly on the to be</p> <p>19 reviewed list. I think this is what I</p> <p>20 said, at least what I meant.</p> <p>21 Q. I'm glad you just said that</p> <p>22 because I think maybe we were a little</p> <p>23 confused or I was a little confused.</p> <p>24 Because there's a difference between you</p> <p>25 telling me what the best practice is in</p>	<p style="text-align: right;">Page 173</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 Q. But you don't know what</p> <p>3 materials they had access to?</p> <p>4 A. I have no idea.</p> <p>5 Q. So if I understand your</p> <p>6 testimony, you're unable to testify under</p> <p>7 oath here today that somebody within</p> <p>8 Lyxor or the Lyxor funds, or even within</p> <p>9 Societe Generale actually reviewed any</p> <p>10 Grant Thornton audit report of Refco or</p> <p>11 RCM; is that correct?</p> <p>12 A. I expect them to have done it</p> <p>13 to the extent they are available, but I</p> <p>14 can't say for certain it happened.</p> <p>15 Q. And you don't know to what</p> <p>16 extent they were available, right?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you know, sir, whether</p> <p>19 anything Grant Thornton did ever</p> <p>20 influenced the Lyxor funds' investment</p> <p>21 decisions with respect to FX trading back</p> <p>22 in the 2005 time period?</p> <p>23 A. Well, I think we were not</p> <p>24 aware of being exposed to RCM, so as a</p> <p>25 matter of fact, we couldn't have made any</p>

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<p style="text-align: right;">Page 174</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 conscious decision based on any</p> <p>3 statement. If we knew, though, that</p> <p>4 there were some problems we would</p> <p>5 certainly, didn't have exposure, we would</p> <p>6 have moved our assets quickly.</p> <p>7 Q. Just so I make sure I have an</p> <p>8 answer to my question, you don't believe,</p> <p>9 do you, sir, that anything Grant Thornton</p> <p>10 did back in 2005 influenced any of the</p> <p>11 Lyxor funds' investment decisions,</p> <p>12 correct?</p> <p>13 MR. GOTTLIEB: Could you</p> <p>14 phrase that positively because</p> <p>15 you're going to have a problem with</p> <p>16 the word don't.</p> <p>17 MR. DOYLE: I'll take that as</p> <p>18 an objection to form and I'll try</p> <p>19 to repeat my question to you.</p> <p>20 Q. To the best of your knowledge,</p> <p>21 Mr. Benzaken, did Grant Thornton do</p> <p>22 anything back in the 2004/2005 time frame</p> <p>23 that influenced the investment</p> <p>24 decisionmaking of the Lyxor funds with</p> <p>25 respect to FX trading?</p>	<p style="text-align: right;">Page 176</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 A. The answer is no, we didn't</p> <p>3 have any exposure to, I mean we're not</p> <p>4 supposed to have exposure to RCM.</p> <p>5 Q. And would your answer be the</p> <p>6 same with respect to Refco? In other</p> <p>7 words, back in 2005, did the Lyxor funds</p> <p>8 ever rely in any way on the content or</p> <p>9 information contained in Grant Thornton's</p> <p>10 audit reports of Refco?</p> <p>11 MR. RAND: Objection to form.</p> <p>12 A. The answer is no, we -- the</p> <p>13 answer is no.</p> <p>14 Q. During that same year, 2005,</p> <p>15 did the Lyxor funds ever rely on Grant</p> <p>16 Thornton to keep them informed about the</p> <p>17 financial condition of RCM?</p> <p>18 A. Say that again.</p> <p>19 Q. Yes. Back in --</p> <p>20 MR. GOTTLIEB: You're not</p> <p>21 trying to be tricky, are you, by</p> <p>22 asking the same question over and</p> <p>23 over and over again?</p> <p>24 Q. During that same year, 2005,</p> <p>25 did the Lyxor funds ever rely on Grant</p>
<p style="text-align: right;">Page 175</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 MR. GOTTLIEB: Objection to</p> <p>3 the form.</p> <p>4 A. The answer is no. We were not</p> <p>5 supposed to have exposure to RCM, so why</p> <p>6 would we care?</p> <p>7 Q. To the best of your knowledge,</p> <p>8 in making their investment decisions back</p> <p>9 in 2005 did the Lyxor funds ever rely in</p> <p>10 any way on the content or information</p> <p>11 contained in Grant Thornton's audit</p> <p>12 reports of RCM?</p> <p>13 A. Can you be specific in your</p> <p>14 question, please. Or repeat it, please.</p> <p>15 Q. I don't know that I can be any</p> <p>16 more specific. I'm going to ask the</p> <p>17 court reporter to read it back to you if</p> <p>18 that's okay.</p> <p>19 (Record read as requested.)</p> <p>20 A. We didn't make any conscious</p> <p>21 decision to invest with RCM.</p> <p>22 Q. I'm not trying to be tricky</p> <p>23 with the question. I know -- I'm not</p> <p>24 trying to confuse you. I think the</p> <p>25 answer is no?</p>	<p style="text-align: right;">Page 177</p> <p>1 NATHANAËL BENZAKEN</p> <p>2 Thornton to keep them informed about the</p> <p>3 financial condition of RCM?</p> <p>4 MR. RAND: Objection to form.</p> <p>5 MR. GOTTLIEB: Objection.</p> <p>6 A. At what time, exactly?</p> <p>7 Q. In 2005, at any time. In</p> <p>8 other words, the Lyxor fund was making FX</p> <p>9 trades. Was it looking at any point in</p> <p>10 time to Grant Thornton to keep them</p> <p>11 apprised or informed about the financial</p> <p>12 condition of RCM in the context of making</p> <p>13 those trades?</p> <p>14 A. So to my knowledge, we have no</p> <p>15 exposure to Refco, that's point number 1.</p> <p>16 Point number 2, this happened</p> <p>17 by virtue of this negative consent letter</p> <p>18 only on August 31st, 2005. So we had no</p> <p>19 exposure beforehand, conscious exposure.</p> <p>20 Why would we rely on any auditor's report</p> <p>21 for a counterparty we have no exposure</p> <p>22 to?</p> <p>23 Q. Do you know anyone from Grant</p> <p>24 Thornton?</p> <p>25 A. I know no one.</p>

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